

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

1 Jose Luis Villanueva,

2 Case No. 2:21-cv-01436-CDS-DJA

3 Plaintiff

4 Order Dismissing and
5 Closing Case

6 v.

7 Charles Daniels, *et al.*,

8 Defendants

10 Plaintiff Jose Villanueva brings this civil rights action under 42 U.S.C. § 1983 to redress
 11 constitutional violations that he claims he suffered while incarcerated at High Desert State
 12 Prison. ECF No. 9. On January 26, 2023, I vacated my order dismissing and closing this action
 13 and ordered Villanueva to either pay the full \$402 filing fee for a civil action or file a new fully
 14 complete application to proceed *in forma pauperis* by March 24, 2023. ECF No. 21. Before that
 15 deadline expired, Villanueva moved to extend it, arguing that he was waiting for prison officials
 16 to provide his financial documents. ECF No. 23. On February 14, 2023, Magistrate Judge
 17 Albregts granted Villanueva an extension and ordered him to either pay the required filing fee or
 18 apply for *in forma pauperis* status by April 17, 2023. ECF No. 27. Judge Albregts warned Villanueva
 19 that the action could be dismissed if he failed to timely comply. That deadline expired and
 20 Villanueva did not file an amended complaint, move for an extension, or otherwise respond.

21 I. DISCUSSION

22 District courts have the inherent power to control their dockets and “[i]n the exercise of
 23 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.

24 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss
 25 an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v.*
 26 *King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to comply with local
 27 rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
 28 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining

1 whether to dismiss an action on one of these grounds, the court must consider: (1) the public's
 2 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the
 3 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
 4 merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine Prod. Liab.*
 5 *Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this litigation and
 7 the court's interest in managing its docket, weigh in favor of dismissing Villanueva's claims. The
 8 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 9 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
 10 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
 11 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is
 12 greatly outweighed by the factors favoring dismissal.

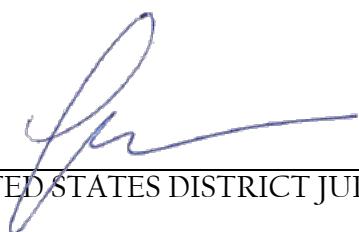
13 The fifth factor requires the court to consider whether less drastic alternatives can be
 14 used to correct the party's failure that brought about the court's need to consider dismissal. *See*
 15 *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
 16 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
 17 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002)). Courts “need not exhaust every
 18 sanction short of dismissal before finally dismissing a case, but must explore possible and
 19 meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this
 20 court cannot operate without collecting reasonable fees, and litigation cannot progress without
 21 a plaintiff's compliance with court orders, the only alternative is to enter a third order setting
 22 another deadline. But issuing a third order will only delay the inevitable and further squander
 23 the court's finite resources. Setting another deadline is not a meaningful alternative given these
 24 circumstances. So the fifth factor favors dismissal.

25 **II. CONCLUSION**

26 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
 27 dismissal. It is therefore ordered that this action is dismissed without prejudice based on the
 28 plaintiff's failure to pay the filing fee or seek to proceed *in forma pauperis* in compliance with the

1 court's January 26 and February 14, 2023, orders. The Clerk of Court is directed to enter
2 judgment accordingly and close this case. No other documents may be filed in this now-closed
3 case. If Jose Villanueva wishes to pursue his claims, he must file a complaint in a new case.

4 DATED: April 25, 2023

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7 UNITED STATES DISTRICT JUDGE

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